



Devon B. Lincoln
Attorney at Law

E-mail: dlincoln@lozanosmith.com

December 10, 2019

By E-mail: patricia.barajas@ci.salinas.ca.us

City of Salinas
Attn: Patricia Barajas, City Clerk
200 Lincoln Avenue
Salinas, California 93901

Re: Request to Cure or Correct Brown Act Violation Related to Planning Commission Meeting

Dear Ms. Barajas:

Our office represents the Santa Rita Union School District ("District"). This letter is in regard to the City Planning Commission's consideration of the West Area Specific Plan ("Specific Plan"), including the Environmental Impact Report ("EIR") for the Specific Plan, on December 4, 2019. We are writing you this letter on behalf of our client to make a demand that the Planning Commission cure or correct a violation of the Ralph M. Brown Act ("Brown Act") related to this meeting.

Under the Brown Act, any interested person "may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section." (Gov. Code, § 54960.1, subd. (a).) Prior to commencing such an action, the interested person is required to make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of the aforementioned sections. (Gov. Code, § 54960.1, subd. (b).)

As I stated in my letter to Ms. Jill Miller dated December 4, 2019, it was not clear to me how the Planning Commission agenda packet materials were going to be distributed to the Planning Commissioners and made available to the public for the meeting. Recipients who placed themselves on the email distribution list (myself included) received this note: "Please note that due to the large page count of the attachments, only a hardcopy of the Agenda will be distributed to Planning Commissioners during the meeting." To comply with the Brown Act, agenda attachments need to be made available to the public if they are going to be viewed and considered by members of a body at a meeting. (See Gov. Code, § 54957.5.) What I later found out is that the Agenda's attachments could have been accessed through the City's website. However, the website was entirely misleading as to the availability of the attachments, which violated both the letter and spirit of the Brown Act.

Limited Liability Partnership

4 Lower Ragsdale Drive, Suite 200 Monterey, California 93940-5758 Tel 831-646-1501 Fax 831-646-1801

City of Salinas
Attn: Patricia Barajas, City Clerk
December 10, 2019
Page 2

On the City's website, there is a direct link to "Agendas" on the home page. Clicking on this link, a person is taken to "salinas.legistar.com/calendar."¹ For the Planning Commission meeting on December 4, 2019, there is an active (blue) link to the Agenda. However, under "Agenda Packet," it clearly states "Not available." If a person goes ahead and clicks on the agenda, "ID#19-513" is written next to "West Area Specific Plan Project," and it is in blue, suggesting a link. (See Gov. Code, § 54954.2, subd. (a)(2)(C)(iv).) However, there is nothing on the Agenda, or the management platform, that instructs a person on how to access the attachments.

The circumstances described above violated the Brown Act because an agenda is required to give fair notice of the business that is being conducted, and it cannot be confusing or misleading. (See Gov. Code, § 54954.2; *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1177-1179.) Thus, members of the public cannot simply be provided clues from which they have to speculate. This is precisely what happened here. Due to their size, the Agenda attachments were provided online instead of being printed out for the meeting. However, due to the misleading nature of the agenda management platform, a person would have been dissuaded from accessing the attachments because the platform plainly represented that they were "Not available." This by itself violated the Brown Act. While the City may argue that the link on the Agenda itself cured this defect, neither the platform nor the Agenda itself gave any instruction on how a member of the public was actually supposed to access the attachments. Without such instructions, the public was not even provided a clue, which does not come close to meeting Brown Act standards for clarity and transparency.

Government Code section 54960.1(c)(2) requires the Planning Commission to cure or correct the aforementioned Brown Act violation within 30 days of the date of this letter, and inform our client in writing of its actions to cure or correct. If the City's decision is not to cure or correct this defect, our client is to be informed in writing. You may direct any such communications to our office. If you have any questions regarding the above, or if you feel that there are facts or circumstances that our office has not considered in this matter, please let me know. Otherwise, we will await the City's response.

Sincerely,

LOZANO SMITH



Devon B. Lincoln

DBL/en

¹ The Brown Act defines an "Integrated agenda management platform" as "an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public." (Gov. Code, § 54954.2, subd. (a)(2)(D)(i).)

City of Salinas
Attn: Patricia Barajas, City Clerk
December 10, 2019
Page 3

cc: Timothy Ryan, Acting Superintendent/Chief Business Officer
Santa Rita Union School District
(By Email: tryan@santaritaschools.org)

Jill Miller, Senior Planner
City of Salinas
(By Email: jill.miller@ci.salinas.ca.us)